

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional):

2002-015/PU02 0200US1

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Date: **August 9, 2007**

Signature:


Typed or printed name: **KATHLEEN KOPPEN**

Application Number:

10/674,780

Filed:

September 30, 2003

First Named Inventor:

Mr. John W. Northcutt

Art Unit:

2618

Examiner:

CHARLES C. CHOW

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the



applicant/inventor



Signature



assignee of record of the entire interest.

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.

(Form PTO/SB/96)

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Registration Number if acting under 37 CFR 1.34 _____

August 9, 2007

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.



*Total of _____ form(s) is/are submitted.

*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 809. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant. * Applicant's unique citation designation number (optional). * Applicant is to place a check mark here if English language Translation is attached. This collection of information is required by 37 CFR 1.98. This information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of
John Northcutt

Serial No.: **10/674,780**
Filed: **September 30, 2003**

For: **A Method and Apparatus of
Synchronizing Complementary Multi-Media
Effects in a Wireless Communication Device**

Docket No: **2002-015**

PATENT PENDING

Examiner: Charles C. Chow

Group Art Unit: 2618

Confirmation No.: 4445

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CERTIFICATE OF MAILING OR TRANSMISSION [37

CFR 1.8(a)]

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August 9, 2007

Date


Kathleen Koppen

REMARKS IN SUPPORT OF THE PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

Applicant submits the following remarks in support of the Pre-Appeal Brief Request for Review being filed concurrently with a Notice of Appeal. Claims 1-57 are currently pending. The independent claims 1, 11, 22, 31, 41, and 57 stand rejected as either anticipated by Hayashi (GB 2,380,908), or as obvious over Hayashi in view of various other references. None of these rejections withstands legal scrutiny, however, and all rejections fail as a matter of law.

Beginning with the §102 rejections, claim 22 stands rejected as being anticipated by Hayashi. Claim 22 is directed to a method of synchronizing multi-media effects with an audio file stored in memory of a mobile communications device. A processor in the device calculates synchronization information based on analyzing the audio file. The processor then uses the calculated information to synchronize a complementary multi-media effect (e.g., lights, video, tactile functions) with the audio file.

The issue with claim 22 centers on the meaning of the term "calculate." In the context of claim 22, "calculating" synchronization information requires more than just

reading or extracting data that is already included in a header of an audio file. It requires analyzing the audio file to compute and generate the data that is used to synchronize the multi-media effects with the audio file. Such calculation allows the processor performing the synchronization to adjust for signaling delays inherent with the device. This produces a more accurate synchronization than do conventional devices that simply base their synchronization on predetermined data extracted from the audio file. *E.g., Spec.*, pp. 6-12. Indeed, Hayashi discloses just such a conventional device.

Hayashi discloses a mobile phone that downloads play data (i.e., melodic data such as tone frequencies and instrument types, and a synchronization designation) from a server. *Hayashi*, pg. 5, ll. 20-22. Hayashi uses the received play data to reproduce a melody through a speaker, while "a controller determines whether or not a designation for synchronizing the turn on/off operation of the LED with the musical sound is contained in the play data in which the music to be played is contained." *Hayashi*, p. 7, ll. 5-7 (emphasis added). If a designation exists, a tone generator rendering the play data also drives the LEDs and/or a vibrator mechanism in synch with the music. *Hayashi*, p. 7, ln. 20 – p. 8, ln. 23. In other words, Hayashi does not calculate synchronization information based on an analysis of the audio file, but instead merely reads an embedded designation in the audio file to determine whether to perform synchronization according to information already in the file.

Synchronization in Hayashi depends solely on predetermined information already included in the downloaded file. *Hayashi*, pg. 5, ll. 4-6. Simply turning LEDs and vibrating mechanisms on/off with rendered notes does not teach the complexity of calculating the information based on an analysis of the file as claimed. Hayashi fails to anticipate claim 22, or any of its dependent claims.

The Examiner also rejected claims 41 and 57 as being anticipated by Hayashi. Claim 41 is directed to a method of synchronizing complementary multi-media effects with an audio file in a mobile communications device. Claim 57 is directed to a corresponding circuit in the mobile communications device that performs the synchronization. Both claims 41 and 57 require calculating the synchronizing information based on an analysis of the audio file, and synchronizing the multi-media effects based on the calculated information. Accordingly, for reasons similar to those stated above, Hayashi fails to anticipate claims 41 and 57 and all of their respective dependent claims.

Claim 1 stands rejected as being obvious over Hayashi in view of Brenner (U.S. Pat. App. Pub. No. 2004/0139842). Claim 1 is directed to a mobile communications device comprising a processor that calculates the synchronizing information based on an analysis of an audio file, and uses the calculated information to perform the synchronization. For the reasons stated above, Hayashi does not teach or suggest calculating synchronization information, or using the results of those (non-existent) calculations to synchronize the multi-media effects to an audio file. Further, the secondary reference, Brenner, fails to remedy Hayashi.

Brenner discloses an audio file format that defines musical instrument information and commands that associate musical information with light sources on a communication device. A processor reads the commands from the audio file and determines whether they are associated with one or more of the light sources. The processor then controls the light sources according to these commands. Brenner does not teach or suggest that the processor calculates synchronization information from these commands, but simply reads and uses the embedded commands as they are contained in the audio file. Thus, Brenner is no different from Hayashi with respect to how synchronization is performed.

Therefore, neither reference teaches or suggests, alone or in combination, a processor that calculates synchronizing information based on an analysis of the audio file. Further, there

is no reason to combine the references because both references explicitly include synchronization information within their respective audio files. Therefore, the combination fails to produce the claimed invention, and §103 rejection of claim 1 and its dependent claims fails as a matter of law.

Claim 11 stands rejected over Hayashi in view of Shibata (U.S. Pat. App. Pub. No. 2001/0023197) and Armanto (U.S. Pat. No. 6,094,587). Claim 11 is directed to a mobile communications device that stores the audio file in memory. The user inputs synchronizing information, such as timing signatures, via a user interface. The device's processor associates this input information with the audio file, and synchronizes the playback of the audio file with one or more complementary multi-media effects based on the user-supplied synchronizing information.

The Examiner admits that neither Hayashi nor Shibata teaches or suggests, alone or in combination, a processor that associates user-selected synchronization information with a particular audio file stored in memory of the user's device. For this aspect, the Examiner cites Armanto. Armanto does disclose a wireless communication device having a user interface to facilitate the selection of notes, tempos, and frequencies when creating ring tones. Once created, Armanto converts the resultant ring tones into character-based short messages for transmission to other devices. The receiving devices then store the short messages and/or render them as ring tones.

Armanto is irrelevant to the claimed invention because it says nothing about synchronizing multi-media effects with audio files. Whatever files Armanto produces are converted to characters for ease of transmission and storage. They are not used to synchronize multi-media effects with ring tones, and Armanto never suggests that they are. Whatever the Examiner asserts with respect to the Armanto "associations" is therefore speculative and unsupported.

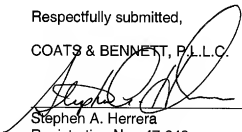
In sum, the audio files in Hayashi already contain whatever synchronization information is needed. Likewise, so do the audio files in Shibata. According to Shibata, a user selects a ring tone having a plurality of pre-defined "melodic lines." These melodic lines include pre-defined information necessary to control the vibrator mechanism and the flashing lights. Because the files of both Hayashi and Shibata already contain their synchronization information, there is no need or reason to combine them. Therefore, none of the references teaches or suggests, alone or in combination, the requisite processor. Therefore, claim 11 and its dependent claims are patentable over the cited art.

Claim 31 stands rejected as being obvious over Hayashi in view of Shibata and Armanto for reasons similar to those stated above. Claim 31, however, is directed to the method that corresponds to claim 11, and as such, includes similar language. For reasons similar to those stated above, the §103 rejection of claim 31 also fails.

In light of the foregoing remarks, all pending claims define patentable subject matter over the references. Therefore, Applicant respectfully requests that the Panel overturn all rejections.

Respectfully submitted,

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